



COMMONWEALTH of VIRGINIA

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Secretary of Natural Resources

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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO RDS OF VIRGINIA, LLC FOR ITS ROANOKE, VIRGINIA FACILITY PBR602

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and RDS of Virginia, LLC, regarding its facility located at 835 Korte Street, Roanoke, Virginia, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Salem, Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" or "Site" means the materials recovery facility located at 835 Korte Street, Roanoke, Virginia, owned and operated by RDS of Virginia, LLC.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
8. "Permit" or "PBR" means Permit by Rule No. 602, which was issued under the Virginia Waste Management Act and the Regulations to RDS of Virginia, LLC on April 19, 2016.
9. "RDS" means RDS of Virginia, LLC, a company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. RDS is a "person" within the meaning of Va. Code § 10.1-1400.
10. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.

SECTION C: Findings of Fact and Conclusions of Law

1. RDS owns and operates the Facility under PBR602. The facility processes commingled source separated recyclable materials only.
2. On June 2, 2017, RDS approached the Department with a request for a Beneficial Use Determination ("BUD") for processed glass material to make an aggregate (sand) substitute that could be used for clean fill as an alternative to having the material end up in a landfill. The Department requested additional information from RDS in order to process the BUD.
3. During the Department's March 2018 compliance inspection, a large volume of glass was stored in a pile behind the Facility's building. The Permit only allows for storage of inert material outside the Facility's structure. The glass pile, which has undergone a primary sorting process, has significant plastic, paper and metal contamination that RDS estimated to be 8 to 10% by weight.
4. The Department stated in its May 2, 2018, August 24, 2018 and February 26, 2019 inspection reports that the Department does not consider the pile inert material and glass

may not be used for inert fill until the contamination is reduced to less than 1%. RDS staff stated there were plans to install additional sorting equipment to remove contamination from the glass pile.

5. On September 4, 2018, the Department approved a BUD for the processed glass material with the conditions that the processed material contain less than 1% contamination.
6. In order to achieve the specification in the BUD, RDS needed to develop and test various equipment configurations, which RDS did in conjunction with the Department's review of the request. The final configuration included three pieces of equipment that must be operated in series including an air knife/blower to remove lightweight finer contamination, a hammer mill to crush glass (but not the contamination) into smaller particle size, and a trommel screen to separate the specific size glass pieces from the remaining contamination.
7. On September 4, 2018, RDS installed the air knife/blower.
8. On October 25, 2018, the Department and RDS finalized a Compliance Agreement ("CA") that contained a schedule of six mutually agreed upon actions:
 - I. By October 20, 2018 – Amend the Facility's self-inspection plan to include the glass pile and inspect the area for migrating waste on at least a monthly basis. On March 28, 2019, RDS amended the self-inspection plan by revising the monthly self-inspection checklist to add inspection of the glass pile and RDS began inspecting the glass pile on that date.
 - II. By November 25, 2018 – Monthly removal of non-glass material from the piles and documentation of the removal on monthly inspection sheets.
 - III. By November 25, 2018 – Install fencing or barriers around the glass piles to reduce migration of material. Monitor the fencing on a weekly basis and remove any accumulated waste. Make repairs to the fencing as necessary. RDS installed silt fences around the glass pile after an August 16, 2018 on-site meeting.
 - IV. By December 25, 2018 – Place an order for the necessary equipment to process the glass cullet. On June 21, 2019, RDS reported that the equipment had NOT been ordered yet.
 - V. By March 1, 2019 – Install the processing equipment. Because the equipment had not been ordered, RDS staff could not provide an anticipated installation date during a June 21, 2019 phone call.
 - VI. By October 25, 2019 – Process all the stored glass to the 1% requirement.
9. On May 16, 2019, Department staff conducted a compliance inspection at the Facility and made the following observations:

- In regards to CA #II, above, the glass pile contained a high degree of contamination. RDS staff reported that the non-glass material was removed on multiple occasions but RDS staff could not provide dates or the frequency of the removal despite the removal being checked on the monthly self-inspection checklists. Following the inspection, RDS documented non-glass debris removal on May 18, 2019.
 - In regards to CA #VI, above, non-clean glass continues to accumulate at the Facility. On July 22, 2019, RDS staff estimated the volume of contaminated glass to be 51,750 cubic feet (1,917 cubic yards).
 - Litter had accumulated outside of the Facility's garage doors and below the loading dock. Additionally, litter was present around the glass pile outside the silt fence.
 - RDS is permitted to store 150 tons of recyclable waste at any given time. According to the July 11, 2019 estimate provided by RDS staff, it appears that approximately 1,810 tons of non-clean glass stored on site (based on 0.944 tons/cubic yard of glass).
10. The Permit's Attachment II Facility description states, in part, "Background ... The following materials will be recovered from the incoming waste stream: paper, plastic, scrap metal, concrete, wood waste and electronic waste. Residual waste that cannot be recycled will be stored appropriately prior to being taken to a permitted disposal facility. Uncontaminated soil, concrete, brick and wood may be stored outside after being separated from the incoming waste stream. All other recovered materials or residual waste shall be stored inside the building or in an appropriate container with cover if stored outside."
11. The Permit's Section 3.5 states that litter on the site will be controlled through operational practices (quick recovery and placed in closed containers) and by the fact that tipping floor is enclosed and only accessible by a garage door. RDS will monitor the grounds to ensure that any litter is promptly collected for proper disposal.
12. 9 VAC 20-81-410(A.6) requires that the owner or operator of a facility operating under a permit by rule may modify its design and operation by furnishing the department a new certificate and applicable permit fees under the provisions of 9VAC20-90 ... Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9 VAC 20-70).
13. 9 VAC 20-81-350 requires that recordkeeping for... materials recovery facilities, waste to energy and incineration facilities, waste piles, and miscellaneous facilities shall be governed by the standards as set forth in this section. Records to be maintained include:
1. The facility owner or operator shall record self-inspections in an inspection log. These records shall be retained for at least three years from the date of inspection.

14. On July 29, 2019, the Department issued Notice of Violation No. NOV-19-07-BRRO-001 to the RDS as a result of the May 16, 2019 Facility inspection.
15. On August 7, 2019, Department staff met with RDS staff to discuss the NOV and a plan of action and timeline to address the areas of non-compliance.
16. In October 2019, RDS ordered a hammer mill unit to crush the glass and Department staff observed the equipment was onsite but in the shipping crate on February 5, 2019. The hammer mill and trommel screen must both be in use together to be effective.
17. On February 5, 2020, Department staff conducted a compliance inspection at the Facility and on March 11, 2020, Department staff conducted a follow-up site visit to view the glass pile and the area behind the Facility building and made the following observations:
 - A large volume of baled paper stored outside the Facility building on the loading dock. RDS staff indicated that the material was stored outside because there was not enough room in the building. On March 11, 2020, DEQ observed that the paper had been removed.
 - Litter outside the Facility building in the gravel area behind the Facility and along the property boundary. Litter had accumulated outside the Facility's garage doors and below the loading dock. On March 11, 2020, DEQ staff noted that much of the litter remained in the perimeter areas of the lot RDS staff stated that some of the litter in the gravel lot and immediately behind the Facility's building had been picked up since the February 5, 2020 inspection. RDS asserts that litter pick-up occurs at least every week or more often, weather dependent.
 - On both dates, litter was observed against the silt fence around the glass pile and litter beyond the silt fence. The glass pile continues to contain a high degree of contamination based on Department staff visual observations. RDS staff reported that non-glass waste material was removed from the pile by raking on multiple occasions and RDS has indicated on the monthly self-inspection checklists that this activity is performed; however, RDS personnel do not document the dates or the frequency of removal on the self-inspection checklists. RDS could not provide records or evidence of weekly litter clean-up.
 - RDS is permitted to store 150 tons of recyclable waste at any given time. According to the July 11, 2019 estimate (see above), it appears that approximately 1,810 tons of glass stored on site (based on 0.944 tons/cubic yard of glass). On both dates, the glass pile remains virtually unchanged.
 - The glass pile has not been included in the closure cost estimate for the Facility and the current financial assurance for the Facility has not been updated to reflect that increased cost.

- The monthly self-inspection reports for July, August, and September 2019 were missing.
 - RDS staff stated that on January 23, 2020, the aluminum screening equipment malfunctioned. This malfunction occurred impeding normal aluminum screening operations beginning Thursday, January 23, 2020 until Monday, January 27, 2020. This malfunction led to extra recycling material being stored on the tipping floor awaiting processing. The facility failed to provide 24-hour verbal notification and a 5-day written notification.
18. 9 VAC 20-81-530.C.3 requires that the permittee shall report to the department any non-compliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances.
19. On March 23, 2020, the DEQ issued NOV No. NOV-20-02-BRRO-002 to RDS as a result of the February 5, 2020 Facility inspection and follow-up inspection on March 11, 2020.
20. On March 31, 2020, RDS responded to the NOV, as requested. This response included a summary of actions that have been taken by RDS.
21. On December 14, 2020, RDS updated its closure cost estimate and provided the necessary financial assurance for the Facility. This addressed and resolved the requirement listed in Paragraph C(8), above, and cited in the July 2019 and March 2020 NOVs.
22. Based on the July 29, 2019, February 5, 2020, and March 23, 2020 site inspections, the Board concludes that RDS has violated the Permit's Attachment II Facility description, the Permit's Section 3.5, 9 VAC 20-81-410(A.6), 9 VAC 20-81-350, and 9 VAC 20-81-530.C.3 regarding the operation of the Facility, as described in paragraphs C(5) through C(12) of this Order.
23. RDS has addressed and resolved the violations with the exception of the Permit's Attachment II Facility description violations, as described in paragraphs C(5) through C(12), above.
24. In order for RDS to return to compliance, DEQ staff and representatives of RDS have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders RDS, and RDS agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$21,263** within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The civil charge payment shall be paid in accordance with the following schedule:

Due Date	Amount
May 7, 2021	\$2,658 or balance
August 7, 2021	\$2,658 or balance
November 7, 2021	\$2,658 or balance
February 7, 2022	\$2,658 or balance
May 7, 2022	\$2,658 or balance
August 7, 2022	\$2,658 or balance
November 7, 2022	\$2,658 or balance
February 7, 2023	\$2,657 or balance

If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by the Owner. Within 15 days of receipt of such letter, RDS shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

All payments shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

RDS shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, RDS shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of RDS for good cause shown by RDS, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, RDS admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. RDS consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. RDS declares he has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and he waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by RDS to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. RDS shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond his control and not due to a lack of good faith or diligence on his part. RDS shall demonstrate that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. RDS shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;

- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which RDS intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and RDS.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after RDS has completed all of the requirements of the Order;
 - b. RDS petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to RDS.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve RDS from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by RDS and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. Any documents to be submitted pursuant to this Order shall be submitted by RDS or an authorized representative of RDS.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, RDS voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

Robert J. Weld, Regional Director
Department of Environmental Quality

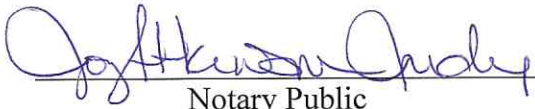
RDS of Virginia, LLC voluntarily agrees to the issuance of this Order.

Date: March 12, 2021 By: 
Mr. Joseph Benedetto III, President

Commonwealth of Virginia

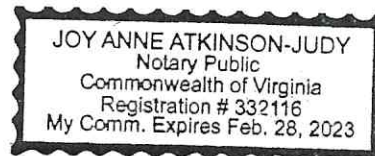
City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 12 day of
March, 2021 by Mr. Joseph Benedetto III, who is President of RDS of Virginia, LLC,
on behalf of the company.


Notary Public
332116
Registration No.

My commission expires: 2/28/2023

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

RDS shall:

1. No later than April 10, 2021 and continuing no later than the 10th day of subsequent months, submit the previous months monthly inspection sheets documenting the removal of non-glass material from the glass cullet pile to the Department for review. The monthly inspection sheets shall be submitted for six (6) consecutive months or until there is no longer a glass cullet pile, whichever is earlier.
2. By July 1, 2021, begin to process the glass cullet pile, in accordance with the approved sampling and analysis plan(s), OR begin to remove and dispose of the glass cullet pile in compliance with the Regulations. RDS shall notify the Department, in writing that the processing has begun.
3. No later than August 10, 2021 and continuing no later than the 10th day of subsequent months, submit the previous months processing volume and removal volume of the glass cullet pile to the Department for review.
4. By July 1, 2022, complete the processing of or the removal of all glass cullet stored outside of the Facility's building. RDS shall notify the Department, in writing that the processing or removal has been completed.
5. Unless otherwise specified in this Order, the RDS shall submit all requirements of Appendix A of this Order to:

Jerry Ford, Jr.
VA DEQ - Blue Ridge Regional Office
901 Russell Drive
Salem, VA 24153
Phone: (540) 562-6817
e-mail: Jerry.Ford@deq.virginia.gov